No. 16-1371

IN THE

Supreme Court of the United States

Terrence Byrd,

Petitioner,

v.

United States of America,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief of *Amici Curiae* Fourth Amendment Scholars in Support of Petitioner

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QUESTION PRESENTED

Whether a driver has a reasonable expectation of privacy in a rental car when the driver has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.

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INTRODUCTION

The *amici curiae* submit this Brief in support of Petitioner, and urge the Court to reverse the opinion of the United States Court of Appeals for the Third Circuit.

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are criminal procedure professors who teach, study, and write about the Fourth Amendment. *Amici* believe this case presents fundamental issues concerning how the Fourth Amendment will be interpreted in numerous cases for decades to come. *Amici* are of the view that an unlisted driver[2] who drives a rental car with the permission of the renter has a legitimate expectation of privacy in the rental car.

SUMMARY OF THE ARGUMENT

When an individual rents a rental car, the rental car company gives them permission to *use* the car and permission to *drive* the car. An "authorized

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[1] The parties' counsel have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[2] This brief uses the term "unlisted driver" to refer to a person who has permission of the renter to use a rental car but is not listed as an "authorized driver" on the rental agreement.

driver" clause precludes the renter from giving an unlisted driver permission to *drive* the rental car but does not preclude the renter from giving an unauthorized driver permission to *use* the car for purposes other than driving. When the renter gives an unlisted driver permission to use the rental car by giving the unlisted driver the key to the car, the unlisted driver has the right to exclude others from the car and, thus, has a legitimate expectation of privacy in it. For example, if a renter drove with an unlisted driver to a job interview and left the unlisted driver with the rental car and its key while being interviewed for a couple of hours, the unlisted driver would have the right to exclude others from the car and a legitimate expectation of privacy in it.

In the case at hand, the renter gave Petitioner permission to use the rental car and permission to drive it. While the "authorized driver" clause precluded the renter from authorizing Petitioner to drive the rental car, that clause had no bearing on, nor did it negate, the authorization given by the renter for Petitioner to use the vehicle. Therefore, by driving the rental car, Petitioner merely engaged in an unauthorized *use* of the rental car, not an unauthorized *taking* of the car. This type of unauthorized use—unauthorized driving—is typically prohibited in the same section of rental agreements that also prohibits renters from engaging in behavior such as using rental cars to commit crimes, to tow or push anything, or to carry

passengers or property for hire. Given that courts routinely hold that renters maintain a legitimate expectation of privacy despite engaging in behavior that is prohibited by such a section, this Court should find that a similar violation by an unlisted driver does not vitiate that driver's legitimate expectation of privacy in a rental car borrowed from the renter.

ARGUMENT

I. Renters have a legitimate expectation of privacy in rental cars, even if they have committed technical or serious breaches of their rental agreements.

For a defendant to have standing to challenge a search, the defendant must have "a legitimate expectation of privacy in the invaded place." *Rakas v. Illinois*, 439 U.S. 128, 143 (1978). A "legitimate expectation of privacy" is a subjective expectation of privacy in the invaded place that "society is prepared to accept as reasonable." *Id.* at 143. A renter can have a legitimate expectation of privacy in a rental car "during the term of the lease because the contractual relationship grants the lessee a property interest in the car for a finite term." *Hall v. State*, 477 S.E.2d 364, 366 (Ga. App. 1996).

A renter can also have a legitimate expectation of privacy in a rental car even after the expiration of the lease. Both federal circuit courts to address the issue have held that a renter retains control and possession over an overdue rental car, affording the renter a legitimate expectation of privacy, in the absence of the rental car company attempting to repossess the car. *See United States v. Henderson*, 241 F.3d 638, 647 (9th Cir. 2000) (finding that "a lessee has a reasonable expectation of privacy in a rental car on which the lease has expired"); *United States v. Cooper*, 133 F.3d 1394, 1402 (11th Cir.

1998) ("[W]e hold that society is prepared to accept as reasonable Cooper's expectation of privacy in the overdue rental car and, therefore, he has standing to challenge law enforcement's search of the glove compartment, the trunk and the items therein."). In *United States v. Thomas*, 447 F.3d 1191, 1198 (9th Cir. 2006), the Ninth Circuit referred to a renter possessing a rental car after the lease has expired as a "technical violation of a leasing contract" that is insufficient to vitiate the renter's legitimate expectation of privacy.

Courts have also found that serious, and even illegal, breaches of rental car agreements are insufficient to vitiate a renter's legitimate expectation of privacy in a rental car. For example, in *United States v. Walton*, 763 F.3d 655 (7th Cir. 2014), a renter with a suspended license rented a car and was pulled over while illegally transporting seven kilograms of cocaine in the rental car. The government claimed that the renter lacked a legitimate expectation of privacy in the rental car for two reasons. First, the government claimed that because the renter had a suspended licence, he breached the provision of the rental agreement that required him to warrant that he possessed "a valid driver's license." *Id.* at 664. Second, the government alleged that the renter's transportation of cocaine breached the provisions of the rental agreement that (1) stated the "[v]ehicle may not be used...for any illegal purposes, or in the commission of a crime;"

and (2) warned the renter that "ANY PROHIBITED USE OF THE VEHICLE...WILL VOID" the agreement. *Id.*

The Seventh Circuit disagreed, concluding that "[t]he government's proposed standing exception—that drivers have no expectation of privacy in a rental car if they breach the rental agreement—would swallow the general rule" that renters have a legitimate expectation of privacy in rental cars. *Id.* at 665. Indeed, the court noted that "[t]he government's proposed rule would also lead to other absurd results." *Id.* For example, the car rental agreement also contained provisions stating that a renter could not "push or tow anything" or engage in any "willful, wanton, or reckless misconduct," including "carrying passengers in excess of the number of seat belts in the Vehicle," "refueling the vehicle with the wrong type of fuel, *i.e.* diesel in gasoline engine," and "failure to use seat belts." *Id.* According to the court,

> Many drivers of rental cars must transgress certain provisions of this rental agreement, yet they undoubtedly regard the space inside the car as private while they possess it. An ordinary person would not expect his rental car to be open to public viewing or police inspection as a result. Society is willing to recognize a privacy interest

> in a car even if the driver does not mind her P's and Q's at all times.

Id.

Indeed, if a renter lost their legitimate expectation of privacy based upon illegal behavior, "*no defendant* would be able to challenge a search of a rental car" that uncovered contraband because "[r]ental car contracts typically contain boilerplate language that the car is not to be used for illegal purposes." *United States v. Jeter*, 394 F.Supp.2d 1334, 1343 (D.Utah 2005). Therefore, a holding that a renter loses their legitimate expectation of privacy by using a rental car for illegal purposes would effectively overrule "the result in dozens of cases that hold that a defendant validly in possession of a rental car does indeed have the ability to challenge a search." *Id.*

II. A person who properly borrows a car with the owner's permission has a legitimate expectation of privacy in the car.

A person who borrows a car with the owner's permission has a legitimate expectation of privacy in the car. While a borrower does "not have the full panoply of ownership, he has some property or possessory rights." *Matthews v. State*, 431 S.W.3d 596, 607 (Tex. App. 2014). When the owner gives a

borrower the keys to a car and permission to use it, the borrower's "presence in the car is authorized" and they have control over the car and the right to exclude others from it. *Id.* Therefore, "[s]everal federal circuits recognized [a] privacy interest [in borrowed cars] decades ago." *Id.*; *see, e.g., United States v. Gibson*, 708 F.3d 1256, 1277 (11th Cir. 2013) ("We have held that an individual who borrows a vehicle with the owner's consent has a legitimate expectation of privacy in the vehicle and standing to challenge its search while it is in his possession.").

The same analysis applies in the rental car context. It is undisputed that someone who borrows a rental car from a renter in accordance with the rental agreement can have a legitimate expectation of privacy in the rental car. For instance, if a renter lists someone as an "authorized driver" on a rental agreement, that person can borrow the car from the renter and have a legitimate expectation of privacy in the rental car. *See, e.g., Johnson v. United States*, 604 F.3d 1016, 1020 (7th Cir. 2010) ("Similar to an owner driving the car, the authorized driver may have an expectation of privacy in that circumstance."); *cf. United States v. Smith*, 263 F.3d 571, 587 (6th Cir. 2001) (finding that a husband had a legitimate expectation of privacy in his wife's rental car even though he was not listed as an authorized driver).

III. A renter can give an unlisted driver permission to use, but not drive, a rental car, creating a legitimate expectation of privacy.

When a person owns a car, they can give someone permission to use, but not drive, the car, creating a legitimate expectation of privacy. *See, e.g., Esmond v. Liscio*, 224 A.2d 793, 796 (Pa. 1966) (noting that a father had given his son permission to use, but not drive, his car). For example, in *United States v. Howard*, 210 F.Supp.2d 503 (D. Del. 2002), the defendant had his license revoked. Subsequently, the defendant's girlfriend gave the defendant the key to the car and permission to use, but not drive, the car. *Id.* at 512. After meeting with his probation officer, the defendant walked toward the car and put the key in the door. *Id.* at 514 At this point, two probation officers stopped the defendant and eventually searched the car and seized two handguns from it. *Id.*

The government claimed that the defendant did not have standing to challenge the search because his girlfriend "gave him permission to be in the vehicle, but not to drive it." *Id.* at 512. The district court disagreed, concluding that while a thief has no reasonable expectation of privacy in a stolen vehicle, "the facts of this case are different." *Id.* Specifically, the facts demonstrated that the car was not stolen and that the defendant "possessed the car legally." *Id.* According to the court, "[t]here is a substantial

difference between a person who exceeds their rights to a borrowed car and a person who steals a car" because "[t]he borrower has some right to use the vehicle in a limited way whereas the thief does not and never will." *Id.*

Many, and arguably all, of the cases concluding that an unlisted driver does not have a legitimate expectation of privacy in a rental car are premised on the presumption that the renter lacks the authority to give control of a rental car to an unlisted driver. *See, e.g., United States v. Boruff*, 909 F.2d 111, 117 (5th Cir. 1990) ("Lawless had no authority to give control of the car to Boruff."); *United States v. Alexis*, 169 F.Supp.3d 1303, 1311 (S.D. Fla. 2016) (same); *United States v. Crisp*, 542 F.Supp.2d 1267, 1278 (M.D. Fla. 2008) (same); *People v. Bower*, 685 N.E.2d 393, 397 (Ill.App.3d 1997) (same); *Colin v. State*, 646 A.2d 395, 404 (Md.App. 1994) (same).

Rental car agreements, however, merely preclude unlisted drivers from driving or operating a rental car; they contain no prohibition on an unlisted driver using or controlling the rental car. For example, the rental agreement in the case at hand stated that "PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT." C.A. App. 73. Under such a clause, a renter can give a borrower permission to use, but not drive, a rental car, just as a car owner can give similar limited permission to a borrower. *See, e.g., Crowder v. Carroll*, 161 S.E.2d

235, 237 (S.C. 1968) (noting how parents had given their unlicensed son permission to use, but not drive, the family car).

Courts have typically found that a person has a legitimate expectation of privacy in a car if she has possession of the car, permission of the owner, holds a key to the car, and had the right and ability to exclude others, except the owner. *See, e.g., United States v. Portillo*, 633 F.2d 1313, 1317 (9th Cir. 1980) ("Montellano had both permission to use his friend's automobile and the keys to the ignition and the trunk, with which he could exclude all others, save his friend, the owner."); *United States v. Ochs*, 595 F.2d 1247, 1253 (2nd Cir. 1979) ("Just as was the case with Jones and his friend's apartment, Ochs 'not only had permission to use' the car but 'had a key' to it."); *United States v. Cabrera*, 2017 WL 4799790 (D. Nev. Oct. 24, 2017) (quoting *United States v. Thomas*, 447 F.3d 1191, 1198 (9th Cir. 2006) (noting that "'a defendant may have a legitimate expectation of privacy in another's automobile if the defendant is in possession of the automobile, has the permission of the owner, holds a key to the automobile, and has the right and ability to exclude others, except the owner, from the automobile'").

It is easy to imagine several scenarios in which a renter could give an unlisted driver permission to use and control a rental car without violating an "authorized driver" clause in a rental agreement. First, assume that the renter in this case drove with

Petitioner to a job interview and left him with the rental car and its key while she interviewed for a couple of hours. If Petitioner remained with the car in the parking lot, he would have had possession of the car, permission of the renter that was consistent with the rental car agreement, the key to the rental car, and the ability to exclude others from the car. In this case, Petitioner would have had control of the car and a legitimate expectation of privacy in it. *Cf. State v. Walker*, 1989 WL 998022, at *1 (Del. Super. Aug. 3, 1989) (finding that a person had control over a car when its owner/driver gave him its keys and told him to wait in the car).

Second, assume that the renter and the petitioner were at a party and the renter gave the petitioner the key to the rental car so that he could listen to music for the last couple hours of the party because he was feeling ill. *Cf. State Farm Mut. Auto. Ins. Co. v. Colby*, 82 A.3d 1174, 1176 (Vt. 2013) (noting how the decedent borrowed a car with the understanding "that he was not going to drive the car but was going to listen to the car radio"). Again, the petitioner would have had possession of the car, permission of the renter that was consistent with the rental car agreement, the key to the rental car, and the ability to exclude others from the car. Therefore, again, the petitioner would have had control of the car and a legitimate expectation of privacy in it.

Third, assume that the renter in this case lived in a high-crime neighborhood and dropped off a rental

car and its key at Petitioner's house and told him to watch the car while the renter went to work for the day. Petitioner would have had control over the car and the right to exclude others from the car even though he was an unlisted driver; indeed, he would have been given the car for the explicit purpose of excluding others from the car. As long as the petitioner did not drive the car, he would be acting in accordance with the rental car agreement and not in contravention of the rental car company's proprietary interest in the car. Therefore, the petitioner would have a legitimate expectation of privacy in the car and standing to challenge a search of it. *Cf. United States v. Thomas*, 447 F.3d 1191, 1198 (9th Cir. 2006) ("[A] defendant may have a legitimate expectation of privacy in another's car if the defendant is in possession of the car, has the permission of the owner, holds a key to the car, and has the right and ability to exclude others, except the owner, from the car.").

Fourth, assume that the renter knew that Petitioner was interested in the type of car that was rented but had concerns about the amount of space in its trunk. In this case, the renter could have dropped off the car and its keys at Petitioner's house and allowed him to test the trunk space while the renter was at work for the day. Again, Petitioner would have had control over the car and the right to exclude others from it. Accordingly, if he placed pieces of luggage in the trunk to test its size, he

undoubtedly would have a legitimate expectation of privacy in the rental car and standing to challenge a search of it. *Cf. People v. Zepeda*, 2007 WL 530027, at *5 (Cal. App. Feb. 22, 2007) ("Here, the evidence established that, although not allowed to drive his putative wife's car, Chavez had her permission to store his personal property in the car and to use the hidden key to gain entry into the car to retrieve that property, as well as to honk the horn as a signal to her that he had arrived.").

Alternatively, an unlisted driver could even have a legitimate expectation of privacy based upon the renter giving the unlisted driver more limited use of a rental car. For instance, in *People v, Ferris*, 9 N.E.3d 1126, 1135–36 (Ill. App. 4th Dist. 2014), the court collected cases to reach the conclusion that a passenger who had a set of keys to a car and was storing his clothes in the car during a long road trip had a legitimate expectation of privacy in the car even though he was not driving it. It is easy to imagine a scenario in which the car being used on a road trip was a rental car, with an unlisted driver having a similar expectation of privacy as the passenger in *Ferris*.

Relatedly, in *United States v. Hunter*, 663 F.3d 1136, 1144 (10th Cir. 2011), the United States Court of Appeals for the Tenth Circuit found that an unlisted driver had authority to consent to a search of a rental car even when she was not driving the car. According to the court, "there is no legal

authority which expressly states that only the named person on a rental car agreement can authorize a search of a rented car." *Id.* This line of reasoning supports the proposition that an unlisted driver can have a legitimate expectation of privacy given that many have concluded that authority to give consent to a search and a legitimate expectation of privacy "go hand in hand." *United States v. Karo*, 468 U.S. 705, 724 (1984) (O'Connor, J., concurring in part and concurring in the judgment).

IV. An unlisted driver driving a rental car with the renter's permission is an unauthorized use, not an unauthorized taking, and insufficient to vitiate the legitimate expectation of privacy.

The opinions holding that unlisted drivers lack a legitimate expectation of privacy in rental cars are premised upon two related presumptions. The first is that the unlisted driver lacks the owner's permission to use the vehicle and is therefore not in lawful possession of the vehicle. *See, e.g., United States v. Kennedy*, 638 F.3d 159, 165 (3d Cir. 2011) (finding that, unlike the renter, an unlisted driver does not have "lawful possession of the vehicle"); *United States v. Worthon*, 520 F.3d 1173, 1183 (10th Cir. 2008) (finding that an unlisted driver was not in lawful possession or custody of a rental car); *United States v. Roper*, 918 F.2d 885, 888 (10th Cir. 1990) ("He was not the owner nor was he in lawful

possession or custody of the vehicle."); *Colin v. State*, 646 A.2d 1095, 1100 (Md. App. 1994) (finding that an unlisted driver did not have any separate arrangement giving him permission to use the vehicle).

As the last section makes clear, however, when a rental car company rents a car to a renter, it gives the renter both permission to *use* the vehicle and permission to *drive* the vehicle. An "authorized driver" clause only precludes the renter from giving an unlisted driver permission to *drive* the rental car; it does not preclude the renter from giving an unlisted driver permission to *use* the rental car. Therefore, an unlisted driver who obtains permission of the renter to use the rental car has constructive permission from the owner—the rental car company—to use, but not drive the vehicle. Accordingly, when an unlisted driver drives the rental car under these circumstances, the unlisted driver is engaging in an unlawful use, not an unlawful taking, and has a legitimate expectation of privacy in the rental car. *Cf. United States v. Howard*, 210 F.Supp.2d 503, 512 (D. Del. 2002) ("There is a substantial difference between a person who exceeds their rights to a borrowed car and a person who steals a car" because "[t]he borrower has some right to use the vehicle in a limited way whereas the thief does not and never will.").

An analogy can be found in insurance laws that preclude operators of unlawfully taken vehicles from

receiving insurance benefits. For instance, in *Monaco v. Home-Owners Ins. Co.*, 896 N.W.2d 32, 34 (Mich. App. 2016), a mother filed a claim for benefits with her insurance company on behalf of her daughter, who had gotten into an accident while driving her mother's car by herself while having only a learner's permit. The insurance company claimed that the daughter "had taken the vehicle unlawfully regardless of any possible parental permission, considering that, in light of [her] age and the restricted nature of the driver's permit, plaintiff had violated the law by allowing or authorizing [her daughter's] unaccompanied operation of the car." *Id.* at 35. Therefore, the company alleged that the daughter was not entitled to insurance benefits under a Michigan law which stated that a person is not entitled to insurance benefits if "[t]he person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully." MCL 500.3113(a).

The counter-argument was that the daughter "had taken the vehicle lawfully" based upon her mother's testimony that her daughter "had permission to take and drive the car on her own at the time of the accident." *Monaco*, 896 N.W.2d at 35. Therefore, under this counter-argument, the daughter's "lack of a driver's license that would have

allowed her to drive on her own was irrelevant with respect to whether she took the car lawfully." *Id.*

The Court of Appeals of Michigan found that the daughter was not precluded from receiving insurance benefits under the Michigan law because "'the terms 'take' and 'use' are not interchangeable or even synonymous; obtaining possession of an object is very different from employing that object or putting it into service.'" *Id.* (quoting *Amerisure Ins. Co. v. Plumb*, 766 N.W.2d 878, 885 (Mich App. 2009)). Therefore, "'the unlawful use of a vehicle...is not relevant under the unlawful taking language in MCL 500.3113." *Id.* (quoting *Rambin v. Allstate Ins. Co.*, 852 N.W.2d 34, 42 (Mich. 2014)).

As a result,

> Although it may have been unlawful for plaintiff, as owner of the car, to authorize or permit [her daughter] to drive the vehicle in violation of the law, it had no bearing on, nor did it negate, the authorization and permission given by plaintiff for [her daughter] to take the vehicle. [Her daughter] did not "gain[] possession of [the] vehicle contrary to Michigan law". . . ; rather, she unlawfully used the vehicle.

Id. at 38.

A similar analysis applies in the case at hand. Although the rental agreement may not have allowed the renter to authorize Petitioner to drive the rental car, it had no bearing on, nor did it negate, the authorization given by the renter for Petitioner to take the vehicle.

The question then becomes whether Petitioner's breach of the rental agreement by driving the rental car was significant enough to vitiate his legitimate expectation of privacy in the rental car. This takes us to the second presumption made by courts which have concluded that unlisted drivers lack a legitimate expectation of privacy in rental cars: that the driving of a rental car by an unlisted driver is different in magnitude than the breaches by renters who maintain a legitimate expectation of privacy in rental cars.

For instance, in *United States v. Kennedy*, 638 F.3d 159, 166 (3d Cir. 2011), the Third Circuit recognized the precedent holding that a renter maintains a legitimate expectation of privacy in a rental car kept past the expiration of the lease term. The court, though, found that this scenario did not provide a useful analogy to the unlisted driver scenario because "[t]he risk of additional harm to or loss of leased property is likely to be small and easily quantifiable where the lessee merely maintains possession of the property past the expiration of the lease agreement." *Id.* at 167. Indeed, the court noted that car rental agreements typically contain clauses

charging renters a pro rata fee based upon the additional time that the car is used past the expiration of the lease term. *Id.* The court contrasted this type of "technical" breach with the more serious, and unquantifiable, breach that occurs when an unlisted driver drives a rental car. *See id.*

The proper analogy, however, is the one between an unlisted driver driving a rental car and a renter who commits a serious breach or multiple serious breaches of a rental agreement. As noted, courts have consistently held that renters maintain legitimate expectations of privacy in rental cars even when they commit serious, and even illegal, breaches of rental car agreements. *See, e.g., United States v. Walton*, 763 F.3d 655, 664 (7th Cir. 2014) (finding that a renter maintained a legitimate expectation of privacy in a rental car despite using the car to commit illegal acts in breach of the rental agreement); *United States v. Jeter*, 394 F.Supp.2d 1334, 1343 (D. Utah 2005) (finding that a ruling that a defendant lost a legitimate expectation of privacy in a rental car by committing illegal acts would effectively overrule "the result in dozens of cases that hold that a defendant validly in possession of a rental car does indeed have the ability to challenge a search").

The prohibition on unlisted drivers driving rental cars is often contained in the same section of rental agreements as the prohibition on renters engaging in criminal behavior. For example, the Budget Rental

Car agreement currently states that it is a violation of the agreement if

> You use or permit the car to be used: 1) by anyone other than an authorized driver, as defined in paragraph 6; 2) to carry passengers or property for hire; 3) to tow or push anything; 4) to be operated in a test, race or contest, or on unpaved roads; 5) while the driver is under the influence of alcohol and/or a controlled substance and/or otherwise impaired; 6) for conduct that could be charged as a crime such as a felony or misdemeanor, including the transportation of a controlled substance or contraband, or illegal devices; 7) recklessly or while overloaded; or 8) if the car is driven into Mexico without our expressed permission.

Budget Rental Car Agreement for United States & Canada, *available at* https://goo.gl/obqMwQ.

Meanwhile, the rental agreement for Avis, the company from which the car was rented in the case at hand, currently states that it is a violation of the agreement if

> You use or permit the car to be used: 1) by anyone other than an authorized driver, as defined in paragraph 5; 2) to

> carry passengers or property for hire; 3) to tow or push anything; 4) to be operated in a test, race or contest, or on unpaved roads; 5) while the driver is under the influence of alcohol and/or a controlled substance; 6) for conduct that could be charged as a crime such as a felony or misdemeanor, including the transportation of a controlled substances or contraband; 7) recklessly or while overloaded; or 8) if the car is driven into Mexico without our expressed permission.

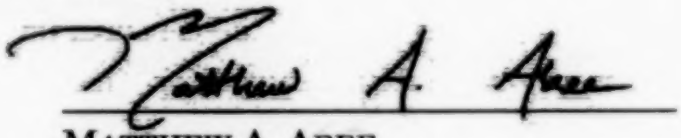
Avis Rental Car Agreement for United States and Canada, *available at* https://goo.gl/6t8oGQ.

Given that courts have consistently held that renters do not lose their legitimate expectation of privacy in rental cars by engaging in illegal behavior, it is difficult to see how unlisted drivers should not lose their legitimate expectation of privacy in properly borrowed cars by improperly driving them. Both violations are covered by the same section of car rental agreements as the section that precludes renters from engaging in illegal behavior, and both breaches seem equally serious and unquantifiable.

CONCLUSION

For these reasons, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,



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November 20, 2017

APPENDIX

List of Amici Curiae

This Appendix provides *amici*'s titles and institutional affiliations for identification purposes only, and not to imply any endorsement of the views expressed herein by amici's institutions.

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